

**Award  
NASD Regulation, Inc.**

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In the Matter of the Arbitration Between:

JOHN J. EGAN and COLLEEN D. EGAN,  
JTWROS, EGAN BUILDERS, INC.,  
JOHN J. EGAN IRA/SEP, COLLEEN  
EGAN c/f SHEILA M. EGAN UGMA,  
COLLEEN EGAN c/f CONNOR J.  
EGAN UGMA, and COLLEEN  
EGAN c/f KRISTIN A. EGAN UGMA,

Claimants

vs.

BEAR STEARNS & COMPANY and  
WILLIAM S. WATROUS

Respondents

Case Number: 99-01396

Hearing Site: Chicago, Illinois

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**REPRESENTATION OF PARTIES**

Claimants John J. Egan, Colleen Egan, JTWROS, Egan Builders, Inc., John J Egan IRA/SEP, Colleen Egan c/f Sheila M. Egan UGMA, Collen Egan c/f Connor J. Egan UGMA, and Collen Egan c/f Kristin A. Egan UGMA ("Egan"), hereinafter collectively referred to as "Claimants": Martin A. Dolan, Esq., Dolan & Shannon, Chicago, Illinois.

Respondents Bear Stearns & Company ("Bear Stearns") and William S. Watrous ("Watrous") hereinafter collectively referred to as "Respondents": Ronald M. Lepinkas, Esq., Lord, Bissell & Brook, Chicago, Illinois.

**CASE INFORMATION**

Statement of Claim filed on or about: March 23, 1999

Claimants signed the Uniform Submission Agreement: January 13, 1999

Statement of Answer filed by Respondent Bear Stearns on or about: July 20, 1999

Respondent Bear Stearns signed the Uniform Submission Agreement: July 13, 1999

Respondent Watrous signed the Uniform Submission Agreement: July 07, 1999

### **CASE SUMMARY**

Claimants asserted the following causes of action: Violation of Illinois State Securities Laws, Violation of the Illinois Uniform Deceptive Trade Practices Act, Violation of the Illinois Consumer Fraud and Deceptive Business Practices Act, Violation of Section 10(b) of the Securities and Exchange Act of 1934, Violation of Section 10b-5 of the Securities and Exchange Act of 1934, General Negligence and Negligence Per se, Breach of Fiduciary Duty, Respondeat Superior, Failure to Supervise, Federal Control Person Liability, and Common Law Fraud.

The causes of action relate to the order execution of the Broadband Technologies, Compression Labs, General Instruments, Integrated Device Technology, Spectrum Information Technology, VLSI Technology, Storage Technology, Cytrix, Osteotech, Cellular Technical Services, GT Investment Funds, Inc., Bear Stearns Investment Trust, and Helionetics stocks.

Unless specifically admitted in its Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses:

1. Failure to state a cause of action upon which relief may be granted.
2. Claimed barred by applicable statutes of limitations
3. Any loss sustained by the Claimants were the direct and proximate result of Claimants' own conduct or negligence or the conduct and/or negligence of a third party other than Bear Stearns
4. Failure to use the requisite care and diligence in the monitoring, trading, management and handling of his own account
5. Any losses allegedly sustained by Claimants are the direct result of market conditions and/or fluctuation beyond the control or prediction of Bear Stearns or Watrous and not any act or omission on the part of Bear Stearns or Watrous
6. Failure to take reasonable and ordinary efforts to mitigate losses
7. At all times relevant hereto Bear Stearns acted in good faith and in compliance with all applicable securities laws, regulations and industry standards of conduct in the handling of the account of the Claimants
8. At all times relevant thereto, Bear Stearns maintained an adequate and reasonable system of supervision and control of its employees, including Watrous
9. Claimants expressly authorized, approved consented and/or ratified each and every transaction

### **RELIEF REQUESTED**

Claimants requested:

Compensatory Damages	\$261,555.06
Punitive Damages	unspecified
Interest	unspecified
Other Costs	unspecified
Other Monetary/Non-Monetary Relief if any:	relief the panel may deem appropriate

Respondents requested:

Other Monetary/Non-Monetary Relief if any:	Dismissal and costs
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**OTHER ISSUES CONSIDERED AND DECIDED**

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

**AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing, and briefs, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

- 1) The Panel acknowledges that personal testimony of the witnesses appear to be diametrically opposed. Such being the case, the Panel has keyed strongly to Industry practice and record-keeping evidence submitted within the Hearing.
- 2) We do not find sufficient documentation to ascribe a "speculative" designation to these accounts, particularly the minor and sheltered IRA accounts.
- 3) Respective Counsel relegated significant time to the inappropriateness of lesser quality securities, options and index trades—arguing the question of "suitability". By extensive review of the records, the Panel acknowledges the arguments on certain lesser quality securities. Further notes that on many occasions, the joint account was margined at or near 50% with as much as 40-50% of the purchasing power of the margined account—being committed to a single holding. The Panel finds disturbing, trades of short-term, perhaps 10-15 days, on which a gain was registered, but 50% of the gain was relegated to commission charges.
- 4) The Panel finds suspect the heavy commitment to Helionectics in the minor accounts. Further, the IRA account change from "staid" GT Investment and Bear Stearns Investment to Cellular Technical. These actions "beg" for formal documentation to assure that this was an investor selection versus a professional broker recommendation. None was provided.

- 5) The Panel would be remiss if we did not comment that even if Mr. Egan began as an uninformed investor in 1988-89, he would have garnered a more informed status during the period of this trading. This recognition is made by the Panel in not giving further consideration of other elements of recovery, i.e. 1) for the lost opportunity for a growth rate of return or for interest monies for the time period, 2) the substantial margin interest that would have been expended, 3) substantial commission charges, 4) the taxes paid on gains on prior years, or 5) the request for attorney's fees, expenses and punitive damages.
- 6) The Panel does find and direct the Respondents, Bear Stearns & Company and William S. Watrous to pay;
  - 1) Ten thousand one hundred ten dollars and eight cents (\$10,110.08) to Kristen A. Egan, UGMA/Illinois, Colleen D. Egan as custodian, Account 340-09288.
  - 2) Ten thousand one hundred ten dollars and eight cents (\$10,110.08), to Connor J. Egan, UGMA/Illinois, Colleen D. Egan as custodian, Account 340-09287.
  - 3) Eleven thousand two hundred forty-seven dollars and fifty-eight cents (\$11,247.58) to Sheila M. Egan, UGMA/Illinois, Colleen D. Egan as custodian, Account 26-29002.
  - 4) Thirty-four thousand six hundred forty-nine dollars and three cents (\$34,649.03) to John J. Egan, IRA/SEP, Account 211-11439.
  - 5) One hundred eighty thousand dollars (\$180,000.00) to John J. & Colleen D. Egan, Joint accounts 026-24225 & 027-45064.
  - 6) No recovery allowed to Egan Builders, Inc., Account 027-40383.
- 7) The Panel directs that all parties' bear their own expenses, including attorney's fees.
- 8) Any and all relief not specifically addressed herein is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Regulation, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$300.00
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### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the events giving rise to the dispute. In this matter, the member firm is a party.

Member surcharge	= \$1,500.00
Pre-hearing process fee	= \$ 600.00
<u>Hearing process fee</u>	<u>= \$2,500.00</u>
Total	= \$4,600.00

### **Forum Fees and Assessments**

The Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing sessions with Panel x \$1125.00	= \$2,250.00
Pre-hearing conferences: November 09, 1999	1 session
October 24, 2000	1 session
Three (3) Hearing sessions x \$1125.00	= \$3,375.00
Hearing Dates: December 13, 2000	2 sessions
December 14, 2000	1 session
<u>Total Forum Fees</u>	<u>= \$5,675.00</u>

1. The Panel has assessed \$2,812.50 of the forum fees, jointly and severally, to Claimants.
2. The Panel has assessed \$2,812.50 of the forum fees, jointly and severally, to Respondents.

### **Fee Summary**

1. Claimants shall be and hereby are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	<u>= \$2,812.50</u>
Total Fees	= \$3,112.50
<u>Less payments</u>	<u>= \$1,425.00</u>
Balance Due NASD Regulation, Inc.	= \$1,687.50

2. Respondent Bear Stearns be and hereby is solely liable for:

<u>Member Fees</u>	<u>= \$4,600.00</u>
Total Fees	= \$4,600.00
<u>Less payments</u>	<u>= \$4,600.00</u>
Balance Due NASD Regulation, Inc.	= \$ 0.00

3. Respondents shall be and hereby are jointly and severally liable for:

<u>Forum Fee</u>	= \$2,812.50
<u>Total Fees</u>	= \$2,812.50
<u>Less payments</u>	= \$2,500.00
Balance Due NASD Regulation, Inc.	= \$ 312.50

All balances are due to NASD Regulation, Inc.

**Concurring Arbitrators' Signatures:**

/s/ Richard Bakka

01/24/01

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Richard S. Bakka, Esq.  
Public Arbitrator, Presiding Chair

\_\_\_\_\_  
Signature Date

/s/ Michael F. Jordan

01/24/01

\_\_\_\_\_  
Michael F. Jordan, Esq.  
Public Arbitrator

\_\_\_\_\_  
Signature Date

/s/ Daniel C. Kriser

01/25/01

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Daniel C. Kriser  
Industry Arbitrator

\_\_\_\_\_  
Signature Date

01/26/01

\_\_\_\_\_  
Date of Service (For NASD office use only)

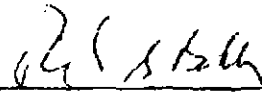
NASD Regulation, Inc. Office of Dispute Resolution  
Arbitration No. 99-01396  
Award Page 6 of 6

3. Respondents shall be and hereby are jointly and severally liable for:

<u>Forum Fee</u>	= \$2,812.50
<u>Total Fees</u>	= \$2,812.50
<u>Less payments</u>	= \$2,500.00
<u>Balance Due NASD Regulation, Inc.</u>	= \$ 312.50

All balances are due to NASD Regulation, Inc.

Concurring Arbitrators' Signatures:

  
\_\_\_\_\_  
Richard S. Bakka, Esq.  
Public Arbitrator, Presiding Chair

January 24, 2001  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Michael F. Jordan, Esq.  
Public Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Daniel C. Kriser  
Industry Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Date of Service (For NASD office use only)

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NASD Regulation, Inc. Office of Dispute Resolution  
Arbitration No. 99-01396  
Award Page 6 of 6

3. Respondents shall be and hereby are jointly and severally liable for:

Forum Fee	= \$2,812.50
Total Fees	= \$2,812.50
Less payments	= \$2,500.00
Balance Due NASD Regulation, Inc.	= \$ 312.50

All balances are due to NASD Regulation, Inc.

Concurring Arbitrators' Signatures:

Richard S. Bakka, Esq.  
Public Arbitrator, Presiding Chair

Signature Date

Michael F. Jordan  
Michael F. Jordan, Esq.  
Public Arbitrator

1/24/01  
Signature Date

Daniel C. Kriser  
Industry Arbitrator

Signature Date

Date of Service (For NASD office use only)



NASD Regulation, Inc. Office of Dispute Resolution  
Arbitration No. 99-01396  
Award Page 6 of 6

3. Respondents shall be and hereby are jointly and severally liable for:

<u>Forum Fee</u>	= \$2,812.50
<u>Total Fees</u>	= \$2,812.50
<u>Less payments</u>	= \$2,500.00
<u>Balance Due NASD Regulation, Inc.</u>	= \$ 312.50

All balances are due to NASD Regulation, Inc.

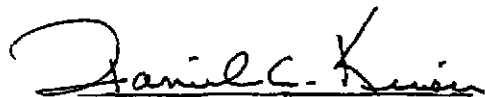
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Richard S. Bakka, Esq.  
Public Arbitrator, Presiding Chair

\_\_\_\_\_  
Signature Date

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Public Arbitrator

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Daniel C. Kriser  
Industry Arbitrator

1/25/01  
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